IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7499 OF 2005

Hirabai Pandurang Waghmare ..Petitioner.

Versus

Shri Pramod Dharma Gaikwad & Anr. ..Respondents.

Mr. P.B. Shah for the Petitioner.

CORAM : S. A. BOBDE, J.
DATED : 28TH OCTOBER, 2005.

P.C.:

1. The petitioner is a defendant against whom the decree has been passed on the following terms :-

ORDER

1) The suit is partly decreed with costs.

2) It is hereby declared that, Plaintiff is the exclusive owner of the suit property.

3) The defendant is hereby permanently restrained from transferring the suit properties to any person by any mode of transfer and she is further permanently restrained from obstructing or interfering

plaintiff's possession over the suit lands. Described in plaint paragraph 1A.

4) The suit of the plaintiff as regards the relief of permanent prohibitory injunction, prohibiting the defendant from obstructing or interfering the possession over the house bearing Grampanchayat Property No. 428, is hereby dismissed.

5) Decree be drawn-up accordingly.

Koregaon. U.M.Mudholkar
dt. 20.7.2004 Civil Judge, Jr.Dv.Koregaon.

2. Against the said order, the petitioner has preferred an appeal. In the appeal, the petitioner applied for the stay of the judgment and decree under Order 49, Rule 5 of the C.P.C.. The appellate court i.e. the VIth Additional District Judge, Satara has come to the conclusion, as regards the stay application, that the impugned decree cannot be put to execution straightway and that even if the respondents makes any attempt to dis-possess the petitioner they

are not entitled to do so under Order 41, Rule 5 and in fact the Additional District Judge has allowed the petitioner to chose a suitable remedy in accordance with law.

3. Having regard to the well known distinction in law between a stay of a judgment and decree and injunction, I am of view that there is no reason to interfere with the impugned order. The petition is, therefore, dismissed.

4. The petitioner shall retain opportunity granted to her by the appellate court. The court shall decide the appeal as expeditiously as possible.

DT. 28.10.05 (S.A.BOBDE,J)

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